

In the United States Emergency Court of Appeals

No. 10

STANLEY W. TAYLOR, COMPLAINANT

v.

LEON HENDERSON, PRICE ADMINISTRATOR, RESPONDENT

RESPONDENT'S OBJECTIONS TO COMPLAINANT'S MOTION TO REQUIRE RESPONDENT TO SUPPLY A SUPPLEMENTAL TRANSCRIPT

Now comes Leon Henderson, Price Administrator, Respondent herein, by his duly authorized attorney and objects to the Motion of Complaint filed herein on December 12, 1942, insofar as said Motion requests this Court to direct the Administrator to supply a supplemental transcript. The grounds underlying such objections are as follows:

(1) To the extent that the Complainant's protest constituted an attack upon the constitutional validity of the Emergency Price Control Act of 1942, the Administrator was compelled to and did accept the constitutionality of that Act and, in denying the protest upon that ground, did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act. There exist certain facts, properly the subject of judicial notice, which support the constitutionality of the Act. To the extent appro-

priate, these will be presented to the Court in Respondent's Brief.

(2) In denying Complainant's protest insofar as it attacked the validity of Maximum Rent Regulation No. 28, Respondent did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act.

(3) The Second Report of the Office of Price Administration Covering the Operations of the Office Between May 1 and July 31, 1942, dated December 1, 1942 (House Doc. No. 891, 77th Cong., 2d Sess.), is a public document which was issued two months subsequent to the denial of Complainant's protest. Its contents were not officially noticed by the Administrator in denying the protest. In any event, the Report is a public document the contents of which are readily available to Complainant and subject to judicial notice by this Court.

Respondent does not object to Complainant's request for additional time within which to file his brief or to the request that his brief may exceed fifty pages in length.

The accompanying memorandum sets forth more fully the facts forming the basis for these objections and the arguments in support thereof.

Respectfully submitted.

DAVID GINSBURG,
General Counsel.

DECEMBER 1942.

In the United States Emergency Court of Appeals

No. 10

STANLEY W. TAYLOR, COMPLAINANT

v.

LEON HENDERSON, PRICE ADMINISTRATOR, RESPONDENT

MEMORANDUM IN SUPPORT OF RESPONDENT'S OBJECTIONS TO COMPLAINANT'S MOTION TO REQUIRE RESPONDENT TO SUP- PLY A SUPPLEMENTAL TRANSCRIPT

STATEMENT OF FACTS

On August 29, 1942, Complainant filed his protest, broadly attacking, among other things, the constitutional validity of the rent control sections of the Emergency Price Control Act of 1942 insofar as they attempt to regulate or control rents of private property outside of the District of Columbia and the validity of Maximum Rent Regulation No. 28 for Housing Accommodations Other Than Hotels and Rooming Houses, issued under authority of that Act on June 30, 1942, for the purpose of controlling rents in the San Francisco Defense-Rental Area, among others (Tr. 1-39).

On September 28, 1942, Respondent issued his order denying the protest and his opinion accompanying that order. Neither the order nor the opinion con-

tained any statement of economic data or other facts officially noticed by Respondent.

On October 23, 1942, Complainant instituted these proceedings. On November 13, 1942, Respondent filed his Answer to the Complaint and the Transcript of Proceedings before the Price Administrator. The Transcript contained no statement of economic data or other facts officially noticed by Respondent. It is this Transcript which Complainant seeks to have Respondent supplement by a statement of the economic data and other facts officially noticed by him.

ARGUMENT

I

In disposing of the protest Respondent did not take official notice of economic data or other facts within the meaning of Section 203 (b) of the Act

A. The constitutional validity of the Act

In Respondent's opinion accompanying the order denying Complainant's protest there appear the following paragraphs:

The Emergency Price Control Act was duly enacted by the Congress of the United States and became effective January 30, 1942. The Administrator is compelled to, and does accept the fact that the Emergency Price Control Act of 1942 is a valid congressional enactment in the interest of national defense and is constitutional * * *.

Though the Administrator is compelled to accept the constitutionality of the Emergency Price Control Act of 1942, this, of course, does not preclude full consideration of that issue by

the Emergency Court of Appeals, specially created by that Act (Tr. 41-42).

Hence, in reaching the decision that insofar as the protest attacked the validity of the Act it should be denied, Respondent regarded himself as bound to accept the constitutional validity of the Act which he was administering. In so doing, Respondent did not take official notice of any economic data or other facts within the meaning of Section 203 (b) of the Act.

This does not preclude the Administrator from presenting to this Court in support of the validity of the Congressional action, economic data or other facts properly the subject of judicial notice. To the extent appropriate, such facts will be set forth and considered fully in Respondent's Brief.

B. The validity of Maximum Rent Regulation No. 28

In determining that the control of rents in the San Francisco Defense-Rental Area would effectuate the purposes of the Act and in the issuance of Maximum Rent Regulation No. 28, the Administrator, of course, took into account certain economic data and other facts in his possession. Complainant did not challenge that Regulation, however, upon any grounds peculiar to the San Francisco Defense-Rental Area. The issues tendered by Complainant with respect to Maximum Rent Regulation No. 28 were general in character, applying to the method of rent control adopted by the Administrator generally throughout the United States.

Hence, in disposing of the protest insofar as it attacked the validity of Maximum Rent Regulation

No. 28, none of the economic data or other facts underlying the issuance of the Regulation were officially noticed or otherwise taken into account by Respondent, nor are they relevant to these proceedings.

II

The Second Report of the Office of Price Administration to Congress should not be incorporated in the Transcript

Complainant seeks to compel Respondent to supplement the Transcript of Proceedings heretofore filed, by the inclusion of the Second Report of the Office of Price Administration Covering the Operations of the Office Between May 1, and July 31, 1942, dated December 1, 1942 (House Doc. 891, 77th Cong., 2d Sess.). This Report was issued two months subsequent to the denial of the protest and its contents were not officially noticed by the Administrator.

Complainant's Motion states that the Second Report "contains matter vital to the establishment of complainant's allegations denied by the Respondent." To the extent that this may be true, the Report is a public document, readily available to Complainant, the contents of which are subject to judicial notice by this Court.

CONCLUSION

Complainant's Motion should be denied insofar as it seeks to require Respondent to supplement the Transcript heretofore filed in these proceedings.

Respectfully submitted.

DAVID GINSBURG,

General Counsel.

THOMAS I. EMERSON,

Associate General Counsel.

NATHANIEL L. NATHANSON,

Assistant General Counsel.

BEN W. HEINEMAN,

Chief, Court Review Branch.

SOL M. LINOWITZ,

Attorney.